In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 471

DUNCAN MILLER, PETITIONER

v.

STEWART L. UDALL, Secretary of the Interior

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case involves applications for oil and gas leases on public lands in Alaska under Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226. These lands had been opened for a period of simultaneous filings with a drawing held to determine priority. Thereafter, petitioner filed his applications and challenged the successful participants in the drawing. His protest was sustained, but the Secretary of the Interior ultimately

held that, rather than issue the leases to him as a "top-filer," the lands should be re-offered for simultaneous filings and a new drawing held—in which petitioner was free to participate (F.J.A. 66-76).[1]

Both petitioner and the winners at the first drawing sought judicial review of the administrative decision. In both cases summary judgment was entered in favor of the Secretary in the district court and affirmed by the court of appeals. *Miller* v. *Udall*, 349 F.2d 193 (C.A. D.C.); *Robertson* v. *Udall*, 349 F.2d 195 (C.A. D.C.). On remand, the petitioner filed a motion to set aside the judgment (S.J.A. 1-7). The motion was denied. A second appeal was taken, which affirmed without opinion the order of the district court. It is from this second judgment of the court of appeals that petitioner seeks review here.

While it is believed that petitioner was accorded ample opportunity to present all relevant evidence and legal arguments at both the administrative and judicial proceedings, any questions relating to due process prior to the first judgment of the court of appeals are not brought before this Court by the present petition. After the judgment of the court of appeals was entered on June 30, 1965, petitioner had 90 days in which to file a petition for a writ of certiorari covering any error which had been properly preserved until that time. 28 U.S.C. 2101(c). Having no claim within the purview of Rule 60(b) of

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[1] "F.J.A.——" refers to the Joint Appendix in No. 18732. "S.J.A.——" refers to the Joint Appendix in No. 19934.

the Rules of Civil Procedure, petitioner could not, instead, apply to the district court. Nor does the present petition revive questions which were open on the first appeal, decided more than a year ago. *Metropolitan Co.* v. *Kaw Valley District*, 223 U.S. 519, 523-524.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

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